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June 5, 2013

The Honorable David Michaels
Assistant Secretary
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue, NW, Room S-2315
Washington, D.C. 20210

Dear Assistant Secretary Michaels:

We strongly support and share the Occupational Safety and Health Administration's (OSHA) commitment to reducing occupational injuries, illnesses, and fatalities. Accordingly, any proposed regulations issued by OSHA ultimately must contribute to the goal of safer and healthier workplaces. To that end, we request information regarding OSHA's work to create a new federal regulatory program, entitled the "Injury and Illness Prevention Program" (I2P2), to understand how this program will improve the health and safety of American workers.

I2P2 was initially listed as a regulatory action in DOL's Spring 2010 Unified Agenda.¹ OSHA's information gathering phase for I2P2 appears to have begun during fiscal year (FY) 2010. According to OSHA's FY 2012 Congressional Budget Justification: "[In FY 2010, OSHA] spent considerable resources on longer term projects that lay the foundation for regulatory activity in future years. In particular, OSHA initiated the rulemaking for the I2P2 standard as part of [the Department of Labor's (DOL)] effort to inject into the regulatory agenda the Department's core values to plan, prevent, and protect."² OSHA held informal meetings with stakeholders during the summer of 2010.³

¹ RIN 1218-AC 48. U.S. Department of Labor, Spring 2010 Semiannual Unified Agenda, (Apr. 26, 2010) *Available at*: <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201004&RIN=1218-AC48> (Accessed June 3, 2013)

² Occupational Safety and Health Administration, Fiscal Year 2012 Congressional Justification, at 26. (Feb. 2011). www.dol.gov/dol/budget/2012/PDF/CBJ-2012-V2-11.pdf

³ "Notice of Stakeholder Meetings on the Occupational Safety and Health Administration's Injury and Illness Programs." *Federal Register* 75, at 23637-23640 (May 4, 2010). *Available at*: <http://www.gpo.gov/fdsys/pkg/FR-2010-05-04/html/2010-10138.htm>. "Notice of Additional Stakeholder Meetings on the Occupational Safety and Health Administration's Injury and Illness Programs." *Federal Register* 75, at 25360-25362 (June 22, 2010). *Available at*: <http://www.gpo.gov/fdsys/pkg/FR-2010-06-22/html/2010-15041.htm>. (Accessed June 3, 2013)

OSHA's public engagement with stakeholders ended in August 2010. OSHA was largely silent as to the status of I2P2 for nearly eighteen months following the stakeholder meetings. In January 2012, OSHA released a white paper that expressed support for creating a federal I2P2 regulation, while offering little insight as to how OSHA intended to craft and implement such a program.⁴

Additionally, the available information concerning this proposed regulation appears to be contradictory. According to DOL's most recent unified agenda, issued on December 21, 2012, the Small Business Administration's (SBA) review of I2P2 pursuant to the *Small Business Regulatory Enforcement Fairness Act of 1996* (SBREFA) began on January 6, 2012, and completion of this review was expected in January 2013.⁵ However, to the best of our knowledge, no SBREFA review has taken place on this regulatory program.

While the background and timetable of OSHA's work on I2P2 remains unclear, employers and other stakeholders have reviewed the abstracts of such a program and have expressed concerns.⁶ Specifically, stakeholders are concerned that if it is implemented, I2P2 would require all employers to create a comprehensive safety and health management system at each worksite, including a complete assessment of a worksite's potential risks and hazards. Further, concerns remain regarding whether OSHA can draft a regulation flexible enough for the needs of the variety of specialized workplaces the agency regulates.

Furthermore, OSHA appears to be pouring resources into drafting a new regulatory program that may not achieve its intended result of reducing injury and illness rates. An independent study concluded a similar program implemented by California's occupational safety and health agency in 1991 has resulted in no reduction in fatality rates.⁷ We are concerned OSHA intends to create a program that will place undue costs and burdens on job creators with no discernible benefit.

To improve the transparency of the process by which OSHA is creating this new regulatory program, we respectfully request you contact our staff to set up a briefing on I2P2 and provide the following information one week in advance of said briefing, **but no later than June 19, 2013**:

- 1) All of the underlying data used in preparing RIN 1218-AC48;
- 2) A full accounting of the federal resources expended in the preparation of RIN 1218-AC48, as well as an estimate of costs anticipated for its implementation, administration, and enforcement;

⁴ See: <http://www.osha.gov/dsg/topics/safetyhealth/OSHAwhite-paper-january2012sm.pdf>

⁵ U.S. Department of Labor, 2012 Unified Agenda, (Dec. 21, 2012) Available at: <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=1218-AC48> (Accessed June 3, 2013)


⁶ Kevin Bogardus, *Lobbying Battle On Tap Over Proposed Changes to Workplace-Safety Rules*, The Hill, Mar. 4, 2011. Available at: <http://thehill.com/business-a-lobbying/147441-lobbying-battle-on-tap-over-proposed-changes-to-work-safety-rules>.

⁷ John Mendeloff, Wayne B. Gray, Amelia M. Haviland, Regan Main, Jing Xia, *An Evaluation of the California Injury and Illness Prevention Program*, RAND Corporation, at 68. Available at: http://www.rand.org/pubs/technical_reports/TR1190.html#key-findings

- 3) All documents and communications between DOL and SBA regarding the preparation of a SBREFA panel;
- 4) All documents and communications pertaining to OSHA's review of RIN 1218-AC48 in light of Executive Order 13563⁸; and
- 5) A detailed description of the timing and manner by which OSHA intends to share the information requested herein with interested stakeholders.

If you have additional questions or comments, please contact Loren Sweatt or Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,


JOHN KLINE
Chairman
Committee on Education and the Workforce
TIM WALBERG
Chairman
Subcommittee on Workforce Protections

Enclosure

CC: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

⁸ On January 18, 2011, President Obama signed Executive Order 13563 directing federal agencies to review existing and future regulations to ensure they are "accessible, consistent, written in plain language and easy to understand." In addition, Executive Order 13563 directs that regulations "shall be adopted through a process that involves public participation" including an "open exchange of information and perspectives."